

WP(MD) No.13131 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
03.01.2025

PRONOUNCED ON
28.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)Nos.13131 of 2015 & 13019 of 2016
WMP.(MD).Nos.9831 & 9832 of 2016 and 10381 of 2020

W.P.(MD).No.13131 of 2015

The Deputy General Manager,
BSNL,
Bibikulam,
Madurai.

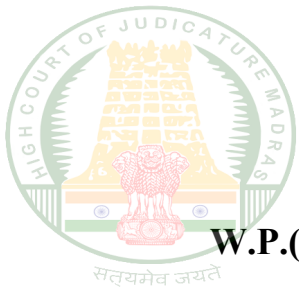
... Petitioner

vs.

The Commissioner,
Madurai Corporation,
Madurai.

... Respondent

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent dated __.07.2015 in Mava4/01362/04 and quash the same and further restraining the respondents from claiming track rent from the petitioner and pass such further order.



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W.P.(MD).No.13019 of 2016

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The Deputy General Manager (CFA)
Bharat Sanchar Nigam Limited,
22, Nethaji Road,
Karaikudi, Sivagangai

... Petitioner

vs.

The Commissioner
Karikudi Municipality,
Karikudi,
Sivagangai District.

... Respondent

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the respondent made in Na.Ka.No.5942/2013/E1, dated 23.06.2016 and quash the same and consequently restraining the respondent from claiming track rent from the petitioner and pass such further order.

For Petitioner : Mr.K.Govindarajan in both W.Ps.,

For Respondent : Mr.S.Vinayak, standing counsel
in W.P.(MD).No.13131 of 2015

Mr.EP.Venkateshwar Standing counsel
in W.P.(MD).No.13019 of 2016

COMMON ORDER

These Writ Petitions challenge the demand made by the respective local authority calling upon the petitioner for payment of track rent for

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laying the underground cables.

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2. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken together and are disposed of by this common order.

3. Heard Mr.K.Govindarajan, learned Deputy Solicitor General of India appearing on behalf of the petitioner in both the Writ Petitions, Mr.S.Vinayak, learned Standing counsel appearing for the Madurai Corporation and Mr.EP.Venkateshwar, learned Standing counsel appearing for the Karikudi Municipality.

4. Mr.K.Govindarajan, learned Deputy Solicitor General of India appearing on behalf of the petitioner would submit that the petitioner is a wholly owned by the Government of India Enterprises. He would submit that pursuant to the advancement of the Technology for giving better telecommunication facilities optical fiber cables along the public ways were carried out after necessary permission from the local authorities concerned. The reinstatement charges were calculated by the authorities proportionate



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to the distance of the cable laid in such public ways and has also been remitted. They had been insisting on the payment of track rent. He would submit that the petitioner is not liable to pay such track rent and also the respondents did not have any authority to claim such track rent. Considering the necessity to provide such public services, the petitioner had made payment as demanded by the local authority, however, under the impugned orders exorbitant amount is being sought for. Relying upon the provisions of the Indian Telegraph Act, 1885, particularly Section 10(c), (d) read with Section 12, he would submit that the local authority such as respondents do not have authority seeking either compensation or track rent. He would further submit that Right of Way Rules 2016 was promulgated, which was only given effect to by the State of Tamil Nadu in the year 2022, in which it had been specifically stated that no track rent either one time/annual shall be chargeable. In such scenario, he would contend that the respondents did not have any authority for making a demand for track rent. Therefore, he seeks indulgence of this Court to set aside the demand made by the respective respondents.

5. The learned Standing counsel appearing on behalf of the Madurai



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Corporation would at the out set contend that the petitioner cannot rely upon the Right of Way Rules upon which the tract rent could not be levied to period prior to the Rules that had come into force. The present impugned order relates to a demand prior to the said Rules. He would further contend that even under the order impugned issued by the Madurai Corporation it had clearly been indicated that if any order is passed by the Government in respect of the track rent, the amount that is demanded and paid, would be refunded. He would contend that since the Government order is only prospective, the petitioner cannot be benefited of such claim and the track rent is being claimed against the petitioner as per the relevant Rules that was in vogue at that point of time. Hence, he would submit no indulgence need be shown to the petitioner and the petitioner be directed to pay the demand made by the respondent.

6. The learned Standing counsel appearing for the Karikudi Municipality would contend that the Government had initially issued G.O.Ms.No.10, dated 04.05.2000, prescribing guidelines for permission to lay optic fiber cables in the State of Tamil Nadu. As per the said guidelines, the local authority was permitted to collect the annual track rent



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at Rs.5500/- per km. He would further submit that Section 10 (c) mandates that the licensee cannot without the previous permission of the local authority concerned, can lay any underground cable. He would also refer to Section 12 and contend that the local authority while giving such permission can impose reasonable conditions. One such condition was payment of track rent and therefore, the petitioner is bound by the condition and is liable to pay the track rent. He would also contend that the petitioner had been hitherto paying the track rent as claimed by the Municipality and therefore, the petitioner is now estopped from claiming that there is no liability on the side of the petitioner to make payment of track rent demanded by the respondent Municipality. Hence, he would seek dismissal of these Writ Petitions.

7. I have heard the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

8. It is an admitted case that a track rent had been demanded by the respective respondents and the petitioner had initially made payment of such track rent. However, it is the case of the petitioner that by a conjoint



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reading of Section 10(c), (d) and Section 12, the respective respondents are not entitled for collecting any track rent and they are entitled only for payment of any expenses to which the authority will necessarily put in consequence of such laying of underground cables. For better appreciation, the relevant provisions are extracted hereunder:-

10. Power for telegraph authority to place and maintain telegraph lines and posts.—The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph establish Ector maintained by the 1 [Central Government], or to be so established or maintained;

(b) the 1 [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post;

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of



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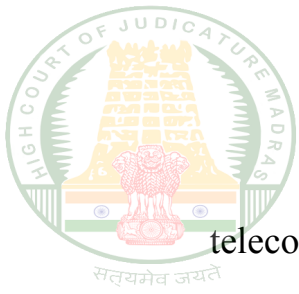
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any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

12. Power for local authority to give permission under section 10, clause (c), subject to conditions.—Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

9. Section 10(c) postulates that the telegraph authority shall not exercise powers in respect of any property vested with the local authority, without permission of such local authority. The telegraph authority has been defined to be the Director General of Post and Telegraphs and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act.

10. The petitioner is an authorised licensee of telegraph authority for exercising its powers for providing telegraph services, which includes the



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telecommunication services. Section 10(d) envisages that such telegraph authority/the petitioner shall do little damage as possible when it exercise its powers and would be liable to pay full compensation to the person interested for any damage sustained by them in respect of property other than refer to clause (c) i.e., the property belonging to the local authority. Section 12 postulates that such local authority while giving permission under Section 10(c) can impose reasonable conditions with regard to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the such power.

11.A conjoint reading of the aforesaid provisions would draw this Court to the conclusion that the petitioner cannot without the authority of the local body lay underground cables and in such process for the damages caused, the local authority would not be entitled for compensation, but would only be entitled for payment to cover the expenses for rectifying any damages that caused by the licensee.

12.The Government Order issued by the Government in G.O.Ms.No. 04, dated 25.01.2022 , pursuant to the Right of Way Rules,2016 under



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which the Tamil Nadu Telecom Infrastructure Policy 2022 was made, particularly clause 15, which prohibits collection of any track rent seems to be only in line with the aforesaid provisions, apart from the Indian Telegraph Right of Way Rules, 2016. In such view of the matter, this Court is inclined to hold that the demand made by the respective respondents claiming track rent is without authority as being *ultra vires* the provisions of the Indian Telegraph Act.

13.In fine, the Writ Petitions are allowed and the impugned demand notices are set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

28.02.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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- To
- 1.The Commissioner,
Madurai Corporation,
Madurai.
 - 2.The Commissioner
Karikudi Municipality,
Karikudi,
Sivagangai District.



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K.KUMARESH BABU.,J.

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A Pre-delivery order made in
W.P.(MD)Nos.13131 of 2015 & 13019 of 2016
WMP.(MD).Nos.9831 & 9832 of 2016 and 10381 of 2020

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